

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
WESTERN DIVISION

UNITED STATES OF AMERICA,)	
)	
)	
Plaintiff,)	
)	
v.)	Civil No.
)	
CITY OF WOODSTOCK;)	
HONEYWELL INTERNATIONAL, INC.;)	
)	
)	
Defendants.)	

COMPLAINT

The United States of America, by authority of the Attorney General of the United States and through the undersigned attorneys, acting at the request of the administrator of the United States Environmental Protection Agency ("EPA") and the United States Department of the Interior ("DOI"), acting through the United States Fish and Wildlife Service, files this complaint and alleges as follows:

STATEMENT OF THE CASE

1. This is a civil action brought pursuant to Sections 106, 107, and 113(g)(2) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), 42 U.S.C. §§ 9606, 9607, and 9613(g)(2). The United States seeks the recovery, pursuant to CERCLA Section 107, 42 U.S.C. § 9607, of costs incurred responding to the release or threat of release of hazardous substances at the Woodstock Municipal Landfill Superfund Site ("Site") in Woodstock, Illinois. The United States further seeks recovery of damages for injury to, loss of, or destruction of natural resources as a result of releases and threatened releases of

hazardous substances into the environment at or from the Site, including the recovery of unreimbursed costs of assessing such damages, pursuant to Section 107(a)(4)(C) of CERCLA, 42 U.S.C. § 9607(a)(4)(C). The United States also seeks injunctive relief requiring that the Defendants take action to abate conditions at the Site that may present an imminent and substantial endangerment to the public health or welfare or the environment because of actual and threatened releases of hazardous substances into the environment at and from the Site. Finally, the United States seeks a declaration, pursuant to CERCLA Section 113(g)(2), 42 U.S.C. § 9613(g)(2), that Defendants are liable for future response costs or damages that may be incurred by the United States in connection with the Site.

JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action pursuant to CERCLA Sections 107 and 113(b), 42 U.S.C. §§ 9607 and 9613(b), and 28 U.S.C. §§ 1331 and 1345.

3. Venue is proper in this district pursuant to CERCLA Section 113(b), 42 U.S.C. § 9613(b), because the claims arose in this district and the threatened and actual releases of hazardous substances occurred in this district.

DEFENDANTS

4. Defendant Honeywell International, Inc. (“Honeywell”) is a Delaware corporation with its principal place of business located at 101 Columbia Road, P.O. Box 4000, Morristown, New Jersey. Honeywell is the successor in liability to both the Eltra Corporation, including Eltra’s Woodstock Die Cast division, and AlliedSignal Corporation.

5. Defendant City of Woodstock (“City”) is an Illinois municipal corporation located in McHenry County, Illinois.

6. Each of the Defendants is a “person” within the meaning of CERCLA Sections 101(21) and 107, 42 U.S.C. §§ 9601(21) and 9607.

7. Each of the Defendants is a person (or a successor to a person) who currently owns or operates the Site, who owned or operated the Site at the time of disposal of hazardous substances at the Site, or who arranged for disposal or treatment or arranged with a transporter for transport for disposal or treatment of hazardous substances owned or possessed by that Defendant at the Site, within the meaning of CERCLA Section 107(a)(1), (2), or (3), 42 U.S.C. § 9607(a)(1), (2), or (3).

BACKGROUND

8. The Woodstock Municipal Landfill Superfund Site covers approximately 52 acres southwest of the intersection of U.S. Highway 14 and State Highway 47 in the southern portion of Woodstock. Between 32 and 35 acres of the Site were used for landfilling waste.

9. The Site contains approximately 30 acres of wetlands on or adjacent to the Site.

10. The Site was used as a trash dump beginning in 1935. The City began using the Site as a municipal landfill in 1958 under a lease with the Site’s owner at the time. The City then purchased the property in 1968, continuing to use the Site as a landfill. By July 1988, solid waste disposal activities had ceased. The City still owns the land.

11. During the operation of the landfill, Honeywell or its predecessors sent hazardous substances to the Site.

12. EPA has found a number of hazardous substances at the Site, including vinyl chloride in the groundwater and benzene, ethylbenzene, toluene, xylene, barium, chromium, lead, and mercury in the landfill leachate. Each of these substances has been designated a hazardous

substance by EPA at 40 C.F.R. § 302.4 pursuant to CERCLA Section 102(a), 42 U.S.C. § 9602(a).

13. The Site was placed on the National Priorities List in October 1989.

14. “Hazardous substances” as defined in CERCLA Section 101(14), 42 U.S.C. § 9601(14), have been “released” within the meaning of CERCLA Section 101(22), 42 U.S.C. § 9601(22), at the Site, or there have been threats of such releases into the environment within the meaning of CERCLA Section 101(22), 42 U.S.C. § 9601(22).

15. The Site is a “facility” within the meaning and scope of CERCLA Section 101(9), 42 U.S.C. § 9601(9), because it is an area where hazardous substances have been deposited, stored, disposed of, placed, or otherwise come to be located.

16. “Natural Resources” within the meaning of Section 101(16) of CERCLA, 42 U.S.C. § 9601(16), have been and/or are being injured, lost, or destroyed as a result of the releases of hazardous substances from the Site.

17. On September 29, 1989, EPA entered an administrative order on consent with Defendants and other parties calling for Defendants to conduct a Remedial Investigation and Feasibility Study (“RI/FS”). Pursuant to CERCLA Section 117, 42 U.S.C. § 9617, EPA published notice of the completion of the feasibility study and the proposed plan for remedial action in a major local newspaper of general circulation.

18. EPA signed a Record of Decision (“ROD”) on June 30, 1993 providing for remedial action at the Site. On September 2, 1994, EPA issued an Unilateral Administrative Order (“UAO”) to Defendants directing them to design and implement the remedy memorialized in the 1993 ROD. The UAO also required Defendants reimburse EPA’s costs incurred overseeing the implementation of the UAO.

19. In response to petitions from Defendants, EPA agreed to change the required remedy and issued a Proposed Plan for an Amendment to the 1993 ROD. Pursuant to CERCLA Section 117, 42 U.S.C. § 9617, the Proposed Plan was available for public review and comment from February 23, 1998 until April 8, 1998, including a public meeting on March 4, 1998. EPA published notice of the proposed plan for remedial action in a major local newspaper of general circulation and provided an opportunity for written and oral comments from the public on that proposed plan for remedial action.

20. The decision by EPA on the remedial action for the Site is embodied in an Amended ROD executed on July 15, 1998. On November 3, 1999, EPA issued a new UAO ordering Defendants to perform the remedy outlined in the 1998 ROD.

21. The United States made a demand for payment of its response costs to Defendants on or before July 12, 2002.

22. The United States has incurred costs in assessing damages for injuries to natural resources resulting from the releases of hazardous substances at the Site.

FIRST CLAIM FOR RELIEF

(Recovery of Costs Under CERCLA Section 107, 42 U.S.C. § 9607)

23. Paragraphs 1-22, above, are realleged and incorporated herein by reference.

24. CERCLA Section 107(a), 42 U.S.C. § 9607(a), provides in pertinent part that:

- (1) the owner or operator of a vessel or a facility, [or]
- (2) any person who at the time of disposal of any hazardous substance owned or operated any facility at which hazardous substances were disposed of, [or]
- (3) any person who by contract, agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances owned or possessed by such person, by any other party or entity, at any facility . . . owned or operated by another party or entity and containing hazardous substances

* * * *

from which there is a release, or a threatened release which causes the incurrence of response costs, of a hazardous substance, shall be liable for

--

(A) all costs of removal or remedial action incurred by the United States Government . . . not inconsistent with the national contingency plan . . .

25. CERCLA Section 113(g)(2), 42 U.S.C. § 9613(g)(2), provides in pertinent part:

(2) Actions for recovery of costs

* * * *

In any . . . action [for recovery of costs] . . . , the court shall enter a declaratory judgment on liability for response costs or damages that will be binding on any subsequent action or actions to recover further response costs or damages.

26. Each of the Defendants is a person (or a successor to a person) who currently owns or operates the Site, who owned or operated the Site at the time of disposal of hazardous substances at the Site, or who arranged for disposal or treatment or arranged with a transporter for transport for disposal or treatment of hazardous substances owned or possessed by that Defendant at the Site, within the meaning of CERCLA Section 107(a)(1), (2), or (3), 42 U.S.C. § 9607(a)(1), (2), or (3).

27. There has been a release of hazardous substances at and from the Site.

28. The actions taken by the United States in connection with the Site constitute “response” actions within the meaning of CERCLA Section 101(25), 42 U.S.C. § 9601(25), in connection with which the United States has incurred costs.

29. As of June 30, 2005, the unreimbursed costs incurred by the United States pursuant to CERCLA Section 104, 42 U.S.C. § 9604, in “response” to the release or threatened release of hazardous substances at and from the Site total at least \$567,000, including the costs of “removal” and “remedial” actions performed or directed by EPA, as those terms are defined in

CERCLA Section 101(23) - (25), 42 U.S.C. § 9601(23) - (25). The United States will continue to incur response costs, including administrative and enforcement costs, as a result of the continued release and/or threatened release of hazardous substances at the Site.

30. The response costs incurred by the United States to date at the Site were incurred in a manner not inconsistent with the National Contingency Plan, 40 C.F.R. Part 300.

31. The United States has satisfied any conditions precedent to undertaking response actions, to incurring response costs, and to recovering those costs under CERCLA Section 107, 42 U.S.C. § 9607.

32. The Defendants are jointly and severally liable to the United States under CERCLA Sections 107(a)(1), (2), or (3) and 113(g)(2), 42 U.S.C. §§ 9607(a) (1), (2), or (3) and 9613(g)(2), for all unreimbursed costs incurred and to be incurred by the United States in responding to the releases and/or threats of releases of hazardous substances at the Site, including enforcement costs and prejudgment interest on such costs.

SECOND CLAIM FOR RELIEF

(Recovery of Natural Resources Damages Under CERCLA Section 107, 42 U.S.C. § 9607)

33. Paragraphs 1 through 32 are realleged and incorporated herein by reference.

34. Pursuant to Section 107(a)(4)(C) of CERCLA, 42 U.S.C. § 9607(a)(4)(C), each of the Defendants is jointly and severally liable to the United States for damages for injury to, destruction of, or loss of natural resources, including the reasonable costs of assessing such injury, destruction, or loss, resulting from a release of hazardous substances at or from the Site.

THIRD CLAIM FOR RELIEF
(Injunctive Relief Under CERCLA Section 106, 42 U.S.C. § 9606)

35. Paragraphs 1 through 34 are realleged and incorporated herein by reference.

36. EPA has determined that there is or may be an imminent and substantial endangerment to the public health or welfare or the environment because of actual and threatened releases of hazardous substances into the environment at and from the Site.

37. Pursuant to CERCLA Section 106(a), 42 U.S.C. § 9606(a), Defendants are subject to injunctive relief to abate the danger or threat presented by releases or threatened releases of hazardous substances into the environment at and from the Site.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff United States of America prays that this Court:

A. Enter judgment in favor of the United States against each Defendant under CERCLA Section 107(a), 42 U.S.C. § 9607(a), finding each Defendant jointly and severally liable for all unreimbursed costs, including prejudgment interest, that the United States has incurred in responding to releases and/or threatened releases of hazardous substances at and from the Site to the date of judgment;

B. Enter judgment in favor of the United States against each Defendant, finding each Defendant jointly and severally liable for all damages for injury to, destruction of, or loss of natural resources, including the reasonable costs of assessing such injury, destruction, or loss, at or from the Site;

C. Order Defendants to abate the conditions at the Site that may present an imminent and substantial endangerment to the public health or welfare or the environment;

D. Enter a declaratory judgment, pursuant to CERCLA Section 113(g)(2), 42 U.S.C. § 9613 (g)(2), finding each Defendant liable for all future response costs incurred by the United

States following judgment, in responding to releases and/or threatened releases of hazardous substances at the Site;

- E. Award the United States its costs of this action; and
- F. Grant such other and further relief as the Court deems appropriate.

Respectfully submitted,

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